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CHARLES ELMORE CHORLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 271

ALCOA STEAMSHIP COMPANY, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**BRIEF OF STOCKARD STEAMSHIP CORPORATION
AS AMICUS CURIAE**

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Statement

Stockard Steamship Corporation has a vital interest in the decision of the instant case. That decision will largely determine the outcome of a suit in the Southern District of New York, brought by Stockard Steamship Corporation for \$73,408.52 for compensation admittedly due from the United States under a general agency contract, but withheld so as to be applied against sums allegedly overpaid by the United States to Stockard on account of freight moneys earned under previous transportation contracts.

\$70,458.42 of the amount so withheld represents freight previously paid by the United States under a contract of affreightment for the carriage of army cargo aboard the s/s William J. Salman, which was lost by enemy action before the cargo could be delivered.

This cargo, like that in the instant case, was shipped under the standard government form of bill of lading, and the Stockard form of bill of lading incorporated therein by reference contained provisions regarding the time when freight is earned substantially identical with those construed by the court below in the instant case.

Payment of the freight on this shipment was made by the United States without question pursuant to what had been the long-settled interpretation by the government of the applicable provisions of the bill of lading.

Subsequently the government, on the basis of the same contentions put forward in the instant case, reversed its position and recouped from moneys admittedly due to Stockard the freight previously unquestioningly paid.

The Issue

The issue raised is whether the government as a shipper is *specifically* exempt under the terms of the standard government bill of lading from the customary liability of shippers for freight where delivery of the cargo has been prevented by causes for which the carrier is not liable, where such freight liability is specifically provided for in the carrier's form of bill of lading incorporated by reference in the contract of carriage.

ARGUMENT

A court should not hold, except on the basis of a clear and specific contractual provision, that the government as a shipper is exempt from the customary liability of shippers for freight where delivery of cargo has been prevented by causes for which the carrier is not liable, where such freight liability is specifically provided for in the carrier's form of bill of lading incorporated by reference in the Contract of Carriage.

I

The liability of shippers for freight where delivery of the cargo at destination is prevented by an excepted cause is a matter of longstanding commercial custom.

The provision in the carrier's bill of lading that full freight "shall be deemed fully earned and due and payable to the Carrier * * * Goods or Vessel lost or not lost" is of course one longstanding in the steamship business. Under this clause alone there is no doubt that recovery would be permitted the petitioner under the circumstances of the present case, as well as those of the pending Stockard suit. As cogently pointed out in the dissenting opinion in the court below, the general maritime rule that freight is not earned until delivery has no bearing where there is an agreement to the contrary. On the basis of this standard agreement specifically incorporated in the government bill of lading the petitioner, as well as Stockard Steamship Corporation and many other steamship companies, has made all its agreements and commitments including those with the government. To hold that this established agreement is not effective when the government is the shipper would operate as a great hardship on those companies—a hardship which they had no reason to anticipate or provide against.

II

The government itself over a period of many years recognized its obligation, in common with other shippers, and paid full freight when delivery of cargo at destination was prevented through an excepted cause.

The government, which of course drew its standard form of bill of lading, recognized over a period of many years its obligation like any other shipper to pay full freight even though the cargo is lost from a cause for which the car-

rier is not responsible. In an opinion rendered in 1918 by the Comptroller of the Treasury to the Secretary of the Navy the principle was unmistakably stated:

"The liability of the Government for freight charges would therefore arise when the shipment is actually made, whether delivered to the destination or lost with the destruction of the vessel." 24 Dec. Comp. Treas. 707 (1918).

The Comptroller General in April, 1942, subsequently approved this opinion (21 Comp. Gen. 909, 913 [1942]).

The government thus adopted and acted upon over a period of many years an interpretation directly opposed to that for which it now contends. This longstanding interpretation and policy strongly reinforces our conviction that such interpretation is, in fact, the only natural interpretation of the language of the government bill of lading, which accords with the long-established commercial custom for *all* shippers. It indicates unmistakably that this was in fact the interpretation intended by the government when it drew the bill of lading. The harsh results to the steamship companies when they contracted in reliance on the accepted interpretation impose on the government a heavy burden of proof to justify its sudden and belated reversal of position.

III

The settled rule that a document is to be construed against the party which draws it is here buttressed by a provision in the government bill of lading itself that the customary liabilities imposed by the carrier's bill of lading shall govern unless otherwise specifically provided.

The action of the court below in sustaining the government's sudden reversal of position and its present con-

tention that unlike any private shipper it is exempt under its form of bill of lading from the customary liability for freight, even though delivery of the cargo at destination is prevented by an excepted cause, is directly contrary to firmly accepted standards of interpretation. The decision of the court below emphasizes the power of the government to exempt itself from the customary obligations regarding freight. Because the government *could*, the court below infers that it *intended* to and *did* do so. On the contrary, the fact that the government itself drew the controlling bill of lading and could draw it on its own terms means under settled principles of construction that the bill of lading must be construed in the case of any ambiguity *against* the government.

The necessity of such a normal construction is of course greatly emphasized where the bill of lading drawn by the government itself provides that the clauses of the carrier's bill of lading shall govern unless otherwise *specifically* provided.

It is respectfully submitted that this provision in the government bill of lading taken in conjunction with the longstanding and customary commercial liability recognized over a great many years by the government itself when it paid freight under the circumstances of this case imposes on the government a very heavy burden of proof to support its present violent and sudden reversal of position.

It is further submitted that the arguments in the brief for the petitioner, Alcoa Steamship Company, Inc., as well as the opinion of the District Court and the dissenting opinion in the court below conclusively demonstrate that the burden of proof resting on the government cannot be and has not been sustained.

CONCLUSION

The judgment of the United States Court of Appeals for the Second Circuit should be reversed and that of the District Court should be affirmed.

Respectfully submitted,

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